IN THE MATTER OF THE ARBITRATION BETWEEN

Service Employees International Union Local 284
Union,

and

OPINION AND AWARD

BMS Case Nos. 05-PN-0893 and 05-PN-0894; Court Order (February 17, 2006); Dakota County Case No. 19-C5-05-006781

Independent School District No, 197, West St. Paul – Mendota Heights – Eagan, Minnesota
Employer.

ARBITRATOR:	Janice K. Frankman, Attorney at Law
DATE OF AWARD:	March 20, 2007
HEARING SITE:	Henry Sibley High School School District Board Room 1897 Delaware Avenue Mendota Heights MN 55118
HEARING DATES:	September 14, 2006 and November 1, 2006
RECORD CLOSED:	January 3, 2007
REPRESENTING THE UNION:	Bruce P. Grostephan, Esq. Peterson, Engberg & Peterson 700 Old Republic Title Building 400 Second Avenue South Minneapolis MN 55401-2498
REPRESENTING THE EMPLOYER:	J. Dennis O'Brien, Esq. Bryan N. Smith, Esq. Littler Mendelson, P.C. IDS Center, Suite 1300 80 South 8th Street Minneapolis MN 55402

JURISDICTION

The hearing in this matter was held on September 14, and November 1, 2006. The Arbitrator was selected to serve pursuant to Court Order, the parties' Collective Bargaining Agreement and the procedures of the Minnesota State Bureau of Mediation Services. The parties submitted contract and statutory issues to arbitration. Both parties were afforded a full and fair opportunity to present their cases. Witnesses were sworn and their testimony was subject to cross-examination. Post Hearing Briefs were filed on December 8 and 11, 2006, by the Union and Employer respectively. Reply Briefs were filed on December 29, 2006 and January 3, 2007, by the Union and the Employer respectively. The record closed on January 3, when the matter was taken under advisement. Transcripts of the two hearing days were prepared by Twin West Reporting, LLC and received by the Arbitrator on November 13, 2006, and February 22, 2007. The parties waived the 30 day deadline for an award provided in their CBA.

ISSUE

This matter was directed to arbitration by Court Order (File No. C5-05-6781). Hon. Edward Lynch issued Findings of Fact, Conclusions of Law and Order dated February 17, 2006, directing the parties as follows:

1. The parties are ordered to arbitrate their PELRA dispute and their dispute over the interpretation of the provisions in the agreements related to Defendant's right to select the insurance carrier and policy.

2. Jurisdiction over the statutory claim under Minn. Stat. §471.6161, Subd. 5 is reserved.

The Union has not provided a statement of the issue. At hearing, it objected to issuance of a damage award in this forum. It argued that damages are properly left for determination in District Court.

In its Post-Hearing Brief, the School District framed the issue in the case as follows:

> Do the collective bargaining agreements allow the District to select a health insurance policy that is marginally different than the policy of a prior year.

At hearing, Counsel for the School District advised that he intended to present evidence and testimony with regard to damages and that he would argue in District Court that the Union had waived its opportunity if it failed to provide damage evidence and testimony.

The Arbitrator believes the following to be an accurate statement of the issues:

Whether the School District violated Minn. Stat. § 179. 13, Subd. 2 when it changed a health insurance plan provided pursuant to the Collective Bargaining Agreements between the District and Child Nutrition and the District and Instructional Paraprofessionals and Assistants effective for the years 2002-2004, and, if so, what is the appropriate remedy?

BACKGROUND AND SUMMARY OF THE EVIDENCE

This matter has been in litigation since February, 2005. The parties were directed to arbitration by Court Order as detailed above in the Statement of the Issues. Additional detail is provided below at pages 7-10 concerning the litigation pending in District Court in this and a related case.

The parties began negotiation of their Collective Bargaining Agreements ("CBA") for the years 2002-2004 on February 10, 2003. The Union represents three bargaining units in the School District including Child Nutritionists ("Food Service Unit" "Nutritionists), Instructional Paraprofessionals and Assistants ("Paraprofessional Unit") and Transportation Workers ("Transportation Unit"). The 2005 lawsuit was brought on behalf of the three units. Donna Pittman (now Donna Friedman), Attorney and Union Business Agent since 1994, was lead negotiator for the Union. MaryAnn Thomas, District Human Resources Director since late January, 2003, was lead negotiator for the School District. The terms of the parties' 2000-2002 Agreements continued until new Agreements were signed in early May, 2003. The earlier Agreements are not a part of this record.

The Union was notified by the District on February 10, 2003, that it expected health insurance premium increases ranging from 0 to 20% and that the District Insurance Committee would be convened to address cost containment. When the bargaining units voted to ratify their new Agreements on April 24, 2003, they did not know what the premium increase would be, which was not an unusual circumstance since negotiations often occur well before premium changes are established. The units also did not know that there would be a change in the benefits structure of the health insurance plans offered to their members.

Union members had sought a change in their Contract to provide a "me too" provision that required the District to pay health insurance premiums for members the same as provided in its Agreement with the teachers in the District. Union Exhibits 5 and 6 reflect the ratified changes made by the 2002-2004 Agreements with the Food Service and Paraprofessional Units.[1] Both 2000-2002 Agreements were amended to provide parity with School District premium contributions for health and hospitalization and dental insurance with the teachers as follows:

[1] The Transportation Unit's 2002-2004 Agreement also contains the change. By Court Order dated March 31, 2006, a Partial Summary Judgment was granted removing the Transportation Unit from the impact of the Court's February 17, 2006, Order which directed the parties to this arbitration.

> Effective upon full ratification of this 2002-2004 contract: Health and hospitalization and dental insurance benefits will be based on language contained in the Master Agreement by and between Independent School District 197 and West St. Paul Federation of Teachers, Local #1148, Article VIII, Sections 6 and 7. [2]
>
> Joint Exhibits 1 and 2, page 8

The new Agreements were signed by the Union on May 2 and May 4, for the Food Service and Paraprofessional Units respectively and by the School District on May 5, 2003.

Insurance Committee

The School District instituted a Health and Safety Committee in the early 1990s which later became the Insurance Committee. The purpose of the Committee was to provide communication with employees on various issues including health insurance and to serve as advisory to the School Board Personnel Administration Committee. The District did not appoint employee members to the Committee. It encouraged employees from the nine bargaining units, represented by six unions, to attend meetings. Union Administration and Business Agents were not a part of the Committee. They did not receive notice of meetings or reports with regard to any decision that was made at them. No minutes of the meetings were prepared. It was an informal Committee which did not operate pursuant to by-laws or rules. There was no quorum required for taking official action or voting. There have been no meetings of the Insurance Committee since the spring of 2003.

MaryAnn Thomas was new to School District in January, 2003. She attended an "Employee Group Insurance Committee" Meeting on March 4, 2003, convened by Mike Petrasek, District Benefits and Payroll Supervisor since 1995. His Meeting Notice dated February 21, was addressed to 16 people, each identified as "Representative". The list included Mary Tuminelly, Food Service Representative; Lorri Schultz, Bus Driver Representative and Claudia Danneker, Para Representative. Mr. Petrasek requested that the invitees send someone else from their bargaining unit if they were unable to attend. He provided two agenda items including review of year to date claims with Medica and discussion of health insurance cost containment ideas. Lee Huenecke, President of the Teachers' Union in the District was copied on the Notice. School District Exhibit 11.

Mr. Petrasek provided notice on April 28, 2003, of a second Employee Group Insurance Committee Meeting on May 7, 2003. The notice list was the same for the second meeting except that it included two different "secretarial representatives" in

[2] Article VIII Sections 6 and 7 of the Teachers' Contract details the School District's contribution to premium cost, expressed in percentages, for health and hospitalization and dental insurance for individual, two party and dependent coverage. There is no reference to plan structure or coverages.

place of one listed on the earlier meeting notice. Mr. Huenecke was copied on the Notice which described the Agenda as follows:

> Make decision on 03-04 health insurance renewal. On March 4, 2003 the committee met and was told by the district's agent that our total loss ratio thru December 31, 2002 was 96% (83.77% for the Elect Plan and 99.9% for the Choice Plan). If that trend continues we would be looking at a 15% increase in premiums beginning July 1, 2003.
>
> The agents presented us with a variety of plan design changes that could decrease that increase in premiums. One idea that was discussed at the meeting was a plan design change to the Choice Plan to help encourage more employees choose the less expensive Elect Plan, which has the lower loss ratio and is better able to contain costs. 50% of the employees on the Choice Plan are using Elect Clinics as their primary clinics.
>
> We'll discuss this option as well as other (sic) at this meeting. We can also discuss the possibility of going out for bid again if renewal rates are as high as 15%.
>
> School District Exhibit 14

Of the three bargaining unit members included on the Meeting notices, Mary Tuminelly was the only one who attended a meeting. Lorri Schultz advised the District that she did not want to be a part of the Committee, and Claudia Danneker did not receive the notices and did not attend either of the Meetings. Mary attended the first Meeting. She was interested in making sure that the Plan she had chosen would continue to be available. She did not regard herself to be representing her unit or the Union and she did not report the discussion at the Meeting to anyone. She was working at the time of the Meeting on May 7. She also found the presentation of alternative health Plans by an outside consultant at the first Meeting to be very confusing, and she had lost interest in attending the Meetings.

In 2002, Medica had offered the District plans which would result in a 0% increase in health insurance premiums. HealthPartners had notified the District that there would be a 14% increase in premiums for that Plan year. The Insurance Committee approved the change in carrier and plans which included two options for employees to choose between. The Choice Plan allowed participants to choose their health care providers and hospitals and the Elect Plan, which was less expensive, had a restricted list of approved providers. Otherwise, the Plans were identical.

Before convening the first Insurance Committee Meeting in 2003, the School District sought the advice of its insurance broker, Acordia Wells Fargo, and were provided with alternative plans through Medica to reduce premiums for the plan year beginning on July 1, 2003. Medica provided three options in addition to maintaining the status quo for an 11.3% premium increase. The three options would result in a 7%, 5% or 3% premium increase. The alternative Choice and Elect Plans would continue to be

offered; however, the Choice Plan benefit structure would be changed while the Elect Plan would stay the same. The proposed changes in the Choice Plan varied by option.

On May 7, 2003, the Insurance Committee voted between the three proposals which would result in Choice Plan changes. Thirteen people, including three teachers, attended the meeting and ten people cast votes. Two voted for the 7% increase option and eight voted for the option which would result in a 5% premium increase. Of the eight, three were administrators including Ms. Thomas and Mr. Petrasek. No one from the three bargaining units attended the meeting. The results of the meeting were not reported to Union representatives and no Minutes were prepared.

On May 14, 2003, Ms. Thomas convened the School Board Personnel Administration Committee which included her and three School Board members. In a Memo dated May 19, 2003, to District Superintendent John Longtin, Ms. Thomas advised that Medica had submitted District health insurance renewal rate information which the Personnel Committee had reviewed. She detailed two alternative rate plans "for changes in the level of benefits for the Medica Choice Plan while leaving the Medica Elect Plan benefit levels unchanged." Union Exhibit 4, page 1. She described the changes and noted that the alternatives would result in 6.5% or 5% premium increases. She provided a Recommended Resolution for approval by the School Board of the latter alternative. At the School Board meeting the same day, Representatives of the Teachers Union, West St. Paul Federation of Teachers Local #1148, objected to the recommendation. The School Board adopted the Resolution.

The changes to the Choice Plan approved by the School Board included an increase in the out-of-pocket maximum from $1000 to $1200, reduction of coverage from 100% to 80% of inpatient hospital expenses and co-pay increases from $10 to $15 for offices visits and urgent care.

Mr. Petrasek provided copies of open enrollment notices for Plan years 2003-2004 and 2004-2005 to "All Eligible District 197 Staff" to the District's eight building secretaries and the transportation location on May 22, 2003, and May 19, 2004. The 2003 Notice detailed benefit level changes in the Choice plan along with total monthly rates paid to Medica for the 2002 and 2003 plan years. The 2004 Notice confirmed that the two plans would remain the same for 2004-2005, provided the total monthly rates paid to Medica for the 2003 and 2004 plan years, and it detailed the full-time employee cost for the 2004-2005 plan year.

2004 Negotiation; Health Insurance for 2005 Plan Year

As negotiation of the 2004-2006 CBA began with the Union in the fall of 2004, Ms. Thomas requested a release of all claims resulting from the health insurance plan changes which had been made for the 2003 and 2004 plan years. In the spring of 2005, The District offered the nine bargaining units in the School District the opportunity to return to the Plans which had been in effect for Plan year 2002 or to continue with the plan options which were offered for 2003 and 2004. The Paraprofessionals chose to

remain with the 2003-2004 plan options. The food service workers chose to return to the 2002 Plans. Medica worked with the District to allow it to make the offer of the different plans. The Teachers' Union had prevailed in lower court in a lawsuit filed against the School District in September, 2004, and the Union had sued the School District in February, 2005. The District wanted to limit its damages in the event the Teachers were upheld on appeal and the Union prevailed.

Litigation

The Teachers' Case

The Teachers' Union sued the School District in District Court (First Judicial District File No. C3-04-6736) and was granted Partial Summary Judgment by Order dated September 27, 2004. The Hon. Richard Spicer ruled that the matter would proceed solely on the issue of damages. The case was based upon the School Board's unilateral change in the benefit structure of one of the health care plans in violation of Minn. Stat. §§ 471.6161 and 179A. The Hon. Robert King, Jr. heard the case on December 15, 2004, and issued Findings of Fact, Conclusions of Law and Order on January 7, 2005. Judge King awarded damages and directed the School District to reinstate its "old Medica Choice plan as soon as possible, but no later than at the expiration of the current plan year." Union Exhibit 9, page 3. The School District appealed the lower court decision to the Court of Appeals which rendered its Opinion on April 18, 2006, upholding the lower court. *West St. Paul Federation of Teachers v ISD 197,* 713 NW2d 366 (Minn App 2006); Union Exhibit 2. Counsel for the School District in this case appeared for the District before the Court of Appeals. He replaced Counsel who represented the District in the lower court. Argument was made for the first time before the Court of Appeals that "the unfair-labor-practice claim was arbitrable under the collective-bargaining agreement". Union Exhibit 2, page 2. The Court of Appeals addressed the new argument as follows:

> Appellant further argues that article VIII, section 1, of the CBA reserved to it the right to unilaterally change the Choice coverage without bargaining with respondent, and therefore, there was no violation of Minn. Stat. § 471.6161, subd. 5. Respondent argues that appellant failed to raise this argument below; and, thus, is barred from raising it on appeal.
>
> Generally, we will not consider matters not argued and considered by the district court. *Thiele v. Stich,* 425 N.W. 2d 580, 582 (Minn. 1988). Here, appellant did not raise respondent's alleged waiver of rights under the CBA in its answer or motion for summary judgment. In its posttrial (sic) motion, appellant referred to the effect of the CBA on respondent's claims, but only addressed the grievance procedure and did not refer to article VIII, section 1. Thus, appellant is barred from raising this argument on appeal. Regardless, appellant's argument lacks merit.

> Minnesota courts have recognized that 'in order to waive a statutory right to negotiate on a mandatory subject of bargaining, a union must express its intention to waive in 'clear and unmistakable language.' ' *Law Enforcement Labor Servs., Inc. v. Sherburne County,* 695 N.W. 2d 630, 638 (Minn. App. 2005).
>
> Article VIII, section 1 of the parties' CBA states: 'Selection of Carrier: The School Board reserves the right to select the insurance carrier and the policy for any group insurance coverage provided for the teacher.' Appellant argues that by agreeing to the language of the CBA, respondent waived its consent rights under the statute. We disagree. Waiver of respondent's consent rights under section 471.6161, subdivision 5, must be 'clear and unmistakable.' *Law Enforcement Labor,* 695 N.W. 2d at 638. We do not discern an intent by respondent in article VIII, section 1, to waive its consent rights.
>
> Further, the provisions of the CBA are consistent with the statute. Appellant bargained for the right to choose the insurance carrier and the policy it wished to provide to respondent teachers. But reserving the right to select the insurance carrier and the policy does not, ipso facto, confer the right to reduce insurance benefits without the consent required by the statute. Here, respondent has the right to select the insurance carrier and policy so long as there is no reduction in benefits.
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> Union Exhibit 2, pages 10 and 11

The Union's Case in District Court

The Union sued the School District in First Judicial District Court per its Summons and Complaint dated February 3, 2005. The several counts of its Complaint are founded upon the bargaining relationship of the parties and alleged violation of statutory provisions and public policy. Its demands for relief include a declaration that the District has committed an unfair labor practice and has failed to follow the terms of the parties' 2002-2004 Collective Bargaining Agreement; an injunction which stops the District from unilaterally implementing a reduction in the aggregate value of health insurance benefits or from failing to follow the terms of the CBA; an award to the Union in the amount of premium money saved by the School District as a result of its action; an injunction which prevents the District from increasing employee co-payments and out of pocket expenses and an award which reimburses them for incurred increases in those expenses; an injunction which stops the District from refusing to meet and negotiate, in good faith, terms and conditions of employment; an award of damages to the Union and bargaining unit members it represents; other relief which is just and equitable; and an award of all costs incurred and reasonable attorney's fees.

The School District interposed its Answer on February 28, 2005, denying the Union's allegations and asserting affirmative defenses. It asserts that the PELRA

claims are barred by the statute of limitations; that the Complaint fails to state a cause of action; that the cause of action is barred by arbitration because the parties' CBA provides for final and binding arbitration where contract interpretation or application is in dispute; and that claims premised on Minn. Stat. § 471.6161, Subd. 5 are not properly addressed by the Court because the statute is an unconstitutional delegation of legislative authority.

As noted in the Statement of the Issues set out at pages 2 and 3 above, this matter was directed to arbitration by Court Order on February 17, 2006. Both parties sought Summary Judgment which was denied. The Court reached the following conclusions:

1. Pursuant to the applicable collective bargaining agreements, the parties must arbitrate their PELRA dispute and their dispute over the interpretation of the provisions in the agreements related to Defendant's right to select the insurance carrier and policy.

2. Defendant waives the 15 day grievance filing provision in the agreements.

3. Minn. Stat.§471.6161, Subd. 5 is not an unconstitutional delegation of legislative authority.

4. This action is not barred by any statute of limitations.

5. Plaintiff properly commenced its PELRA action.

School District Exhibit 3, page 5

The Union's lawsuit includes the three bargaining units it represents in the School District. This matter addresses the issues which have been raised with regard to two of the three units. A second Court Order dated March 31, 2006, was issued following the Union's motion for amended findings of fact following issuance of the February Order which directed the case to arbitration. The second Order directs Partial Summary Judgment for the Transportation Unit. The Court reached the following Conclusions in support of its Order:

CONCLUSION OF LAW

1. There is no contractual provision in the Transportation Workers' collective bargaining agreement that grants Defendant the right to select the insurance carrier and the policy for any group insurance coverage provided for the Transportation Workers.

2. Defendant unilaterally reduced the aggregate value of the Transportation Workers' health insurance benefits in violation of Minn. Stat. §471.6161, Subd. 5.

3. The Transportation Workers are entitled to damages which shall be determined by the Court at an evidentiary hearing.

ORDER

1. Summary Judgment is granted to Plaintiff – Transportation Workers on the issue whether Defendant breached Minn. Stat. §471.6161, Subd. 5.

2. The trial to determine damages on Plaintiff-Transportation Workers' claim that Defendant's (sic) breached Minn. Stat. §471.6161, Subd. 5 shall proceed on May 4, 2006.

3. The February 17, 2006, Order remains in full force and effect with respect to the claims of Plaintiff- Paraprofessionals and Plaintiff – Nutritionists.

4. Any trial on the claims of Plaintiff –Nutritionists and Plaintiff – Paraprofessionals shall be continued to September 14, 2006 to allow time for a final decision from an arbitrator.

5. All other relief is denied.

School District Exhibit 4, pages 5 and 6

Statutory Law; Contract Provision

The following statutory law applies to the parties relative to their relationship and with regard to the provision of group insurance:

179A.01 PUBLIC POLICY.
It is the public policy of this state and the purpose of sections 179A.01 to 179A.25 to promote orderly and constructive relationships between all public employers and their employees. This policy is subject to the paramount right of the citizens of this state to keep inviolate the guarantees for their health, education, safety, and welfare.
The relationships between the public, public employees, and employer governing bodies involve responsibilities to the public and a need for cooperation and employment protection which are different from those found in the private sector. The importance or necessity of some services to the public can create imbalances in the relative bargaining power between public employees and employers. As a result, unique

approaches to negotiations and resolutions of disputes between public employees and employers are necessary.
Unresolved disputes between the public employer and its employees are injurious to the public as well as to the parties. Adequate means must be established for minimizing them and providing for their resolution. Within these limitations and considerations, the legislature has determined that overall policy is best accomplished by:

(1) granting public employees certain rights to organize and choose freely their representatives;
(2) requiring public employers to meet and negotiate with public employees in an appropriate bargaining unit and providing that the result of bargaining be in written agreements; and
(3) establishing special rights, responsibilities, procedures, and limitations regarding public employment relationships which will provide for the protection of the rights of the public employee, the public employer, and the public at large.

* * *

179A.07 RIGHTS AND OBLIGATIONS OF EMPLOYERS.

*** * ***

Subd. 2. **Meet and negotiate.** (a) A public employer has an obligation to meet and negotiate in good faith with the exclusive representative of public employees in an appropriate unit regarding grievance procedures and the terms and conditions of employment, but this obligation does not compel the public employer or its representative to agree to a proposal or require the making of a concession.

* * *

Subd. 4 **Other communication.** If an exclusive representative has been certified for an appropriate unit, the employer shall not meet and negotiate or meet and confer with any employee or group of employees who are in that unit except through the exclusive representative. . . . . .

* * *

179A.13 UNFAIR LABOR PRACTICES.

Subdivision 1. **Actions.** The practices specified in this section are unfair labor practices. Any employee, employer, employee or employer organization, exclusive representative, or any other person or

organization aggrieved by an unfair labor practice as defined in this section may bring an action for injunctive relief and for damages caused by the unfair labor practice in the district court of the county in which the practice is alleged to have occurred. . . . . .

Subd. 2. **Employers.** Public employers, their agents and representatives are prohibited from:
(1) interfering, restraining, or coercing employees in the exercise of the rights guaranteed in sections 179A.01 to 179A.25;

* * *

(5) refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit;

* * *

471.6161 GROUP INSURANCE; GOVERNMENTAL UNITS.

Subd. 3. **Selection of carrier.** The political subdivision shall make benefit and cost comparisons and evaluate the proposals using the written criteria. The political subdivision may negotiate with the carrier on benefits, premiums, and other contract terms. Carriers applying must provide the political subdivision with aggregate claims records for the appropriate period. The political subdivision must prepare a written rationale for its decision before entering into a contract with a carrier.

* * *

Subd. 5. **Collective bargaining.** The aggregate value of benefits provided by a group insurance contract for employees covered by a collective agreement shall not be reduced, unless the public employer and exclusive representative of the employees of an appropriate bargaining unit, certified under section 179A.12, agree to a reduction in benefits.

The District did not notify the Union, either during negotiation of their collective bargaining agreement for 2002-2004 or before it recommended School Board approval on May 19, 2003, of its intent and then decision to change the group health insurance plan to be provided to District employees. The District believed that it was in compliance with Minn. Stat.§471.6161 because it had only changed one of two plans offered to its employees and that the Union had given its consent to the changes consistent with the following provision of the CBAs with the two units:

ARTICLE VIII
GROUP INSURANCE

Section 1. Selection of Carrier: The School District reserves the right to select the insurance carrier and the policy for the group insurance coverages provided for employees.

Joint Exhibits 1 and 2, pages 8 and 7 respectively.

There is evidence that establishment of Labor- Management Insurance Committees is a common practice and that they often make decisions which are binding on Unions and their members. Dennis Dahlman, current Consultant to School Districts and former Labor Relations Director for the Hopkins School District, described the Committee he convened and worked with regularly to review insurance coverages and costs and to make decisions relative to health insurance plans to be provided for Hopkins School District employees. Their work in Committee replaced negotiation of the policy structure and coverages during bargaining sessions. Union representatives were included on the Committee and all decisions made by the Committee were detailed and disseminated to the representatives. It was understood that their work in Committee was binding on the Union and the units they represented. The establishment of the Committee was a practical way to work with all bargaining units at the same time rather than the unwieldy task of negotiating with them separately. There was also financial benefit in providing the same health insurance plans to all employees. Mr. Dahlman testified on both hearing days, and his deposition testimony, given in this matter on April 27, 2006, is a part of this record as Union Exhibit 24.

Impact of Plan Change; Damages

Both parties provided testimony and evidence with respect to the impact of the Choice Plan change on the unit employees. Union witnesses testified that they incurred unexpected expenses. Others did not consider changing to the Elect Plan, in order to keep the same level of benefits without incurring additional expense because of their special health needs and desire to continue treating with physician specialists with whom they had long term relationships. School District Exhibit 25, produced by Medica pursuant to stipulation with the Union in District Court, details additional expenses in the total amount of $8392.10 incurred by the unit members who remained under the Choice Plan during Plan years 2003-2004 and 2004-2005. The document identifies employees and their dependents by number. The document was received over the objection of the Union based on lack of foundation and inability to verify the accuracy of the information. The document was introduced by the District through Payroll and Benefit Supervisor Petrasek.

Earl L. Hoffman, Senior Consultant with Reden & Anders provided expert actuarial testimony for the Union. He reviewed documents, produced by the School District and received as Union Exhibit 12, which detail the health insurance premiums for Plan years 2002-2003, 2003-2004 and 2004-2005 by unit member. Mr. Hoffman prepared a written report dated October 26, 2006, which details the information upon

which he relied and his assumptions, methods and limitations in providing his opinion. He concluded that damages in this case are best measured by the difference in the premium which the District would have paid had the Choice and Elect Plans both been maintained at *status quo* for Plan years 2003-2004 and 2004-2005. One assumption was that the premium savings to the District was the same for each of the Plan years. The actual premium reduction for the first year was was 5.91% based on an 11.2% increase to maintain *status quo*. The actual premium increase for Plan Year 2004-2005 was 9.9%. Medica did not provide a figure for maintaining *status quo* with the 2002-2003 Plan year; consequently, the conservative assumption was made that the same differential representing premium savings (5.91%) would have been maintained for the second year as for the first. Accounting for shared premium contributions between the District and the unit employees, Mr. Hoffman concluded that the District saved a total of $60,767. for the two Plan years as follows:

	District Premium Savings	
	2003-2004	2004-2005
Nutritionists Unit	$25,037.	$28,345.
Paraprofessional Unit	$2,660.	$4,725.
Two year totals	$27,697.	$33,070.
TOTAL	$60,767.	

See, Hoffman testimony, TR (11/1/06), pages 245-301 and Union Exhibits 12 and 15.

The Teachers' Union cases have been cited and discussed above at pages 7 and 8. Following hearing of the matter solely on the issue of damages, the lower court awarded the Union Plaintiff "an amount in damages equal to the difference between what the district would have paid in premiums under the group health plan prior to the unlawful change in the plan and the premiums it did pay for the revised plan." (Order, January 7, 2005). The following conclusions support the Court's award:

* * *

6. The amount of the damages suffered by plaintiff West St. Paul Federation of Teachers is the difference between the dollar figure that the parties had negotiated was the district's payment for health care premiums and the amount that it actually incurred as a result of unilaterally decreasing the value of the plan.

7. The dollar savings to the District amounted to a reduction in premiums of 6.3%

8. That it would be inconsistent with public policy that is implicit in the Minn. Stat. §§179A.07 Subd. 2; 179A.13; and 471.6161 to allow the District to benefit by its violation of said statutes.

Union Exhibit 9, page 4 (Court Order, page A-42)

In upholding the lower court's damage award, the Court of Appeals first recognized that reducing the network of providers, a non-monetary benefit, constitutes a reduction in the value of benefits the same as reduction of tangible monetary benefits. In responding to the School District Appellant's argument that the lower court had erred in its determination of the measure of damages, the Court of Appeals wrote:

> Finally, appellant argues that the district court erred by finding that the measure of damages for its PELRA violation was the premium differential paid by appellant as a result of the unilateral change in Choice coverage. Appellant contends that the proper measure of damages is the out-of-pocket losses incurred by respondent's members.
>
> The district court has broad discretion in determining damages and will not be reversed except for a clear abuse of discretion. (citations omitted) We will not set aside a damage award unless it is 'manifestly and palpably contrary to the evidence.' (citation omitted) Here, appellant did not move for a new trial on damages. . . . .
>
> Respondent presented expert testimony that appellant's out-of-pocket measure of damage was not 'actuarially sound' and that the premium differential was the most appropriate way to measure the damages in these circumstances. And the district court is in the best position to judge whether there was a basis in the record for damages awarded. (citation omitted). Based on the evidence presented, the district court's findings and conclusion regarding the measure of damages are supported by the record and, therefore, is not clearly erroneous.
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> Union Exhibit 2, pages 17 and 18

There is no evidence in this record that the District Court has decided the damage issue for the Transportation Unit in the litigation underlying this case.

POSITION OF THE UNION

The Union argues that the District has violated PELRA by unilaterally reducing the aggregate value of health insurance benefits provided for its bargaining unit

members for plan years 2003 and 2004. It asserts the District failed, as required by law, to negotiate a term and condition of employment and that the District refused to negotiate the significant changes which were made days after the two CBAs for 2002-2004 were signed.

The Union argues that attendance of unit members at Insurance Committee Meetings where health insurance costs and plan structure were discussed is not a substitute for required bargaining. It notes that Union representatives were not included or provided with notice of Insurance Committee meetings. It points to testimony of a unit member who attended the first meeting, was not sent as a representative and felt no responsibility to report to unit members. It points to the fact that a significant number of those who were sent notice of the Insurance Committee meetings in April and May, 2003, were not in attendance when a vote was taken choosing between two benefits structures which would save premiums. It notes that no one was given written notice of the outcome of the Committee meetings, and it points to the recommendation of the Personnel Administration Committee, comprised of an administrator and School Board members, upon which the School Board made its decision to change the health insurance plan.

The Union argues that the CBA language at Article VIII, Section 1, which permits the District to select an insurance carrier and policy, does not constitute consent to the changes or serve to waive its rights under Minn. Stat.§§ 471.6161, subd. 5 and 179A.13, Subd. 2 (5). With regard to interpretation of Minn. Stat. § 471.6161, it points to the District Court Order awarding the Transportation Unit Summary Judgment based upon a violation of the statute and argues that the Court's ruling is the law of this case.

The Union also points to the Court of Appeals Opinion in the Teachers' Union case which upheld the lower Court's decision awarding damages to the Union for unfair labor practice and violation of the same statutory provisions. It notes that the Teachers' CBA with the District included the same "insurance selection" provision, and points to the Court of Appeals response, rejecting the District's argument, made for the first time on appeal, with regard to its rights under the provision. The District argued to the Court of Appeals, as it did in this case, that the case should have been arbitrated based upon contract interpretation and application.

The Union asserts that availability of a broad choice of providers under the Choice Plan was a significant benefit under the costlier Plan which was changed to reduce aggregate benefits, and that the increase in out of pocket expense and co-pays resulted in significant additional expense incurred by employees. It argues that switching to the Elect Plan, as the District suggested employees were free to do in order to maintain the benefits structure, was not feasible or desirable for many employees who required treatment by their chosen providers.

The Union asserts it did not have knowledge of the reduction in benefits until late in 2004. It argues that the District's argument to apply the doctrine of laches is not supported by the facts in the case.

The Union argues that the proper measure of damages is the premium which the District saved by reducing the aggregate value of the benefits available for the two Plan years. It asserts that its loss is measured by comparing the aggregate value of the benefits if *status quo* had been maintained with the aggregate value after the District's unilateral change. It argues that the aggregate value of insurance is properly measured by the premium paid for it. It points to public policy and the inappropriateness of measuring damages, as the District suggests, by the amount of additional expense actually incurred by individuals. It argues that the law supports an award which reflects damage beyond individual or potential loss. It argues that aggregate value includes choice of providers and that there is no accurate way to measure decreased utilization by unit members because of the increased expense. The Union argues that it is entitled to the same measure of damages as that awarded to the Teachers' Union by the lower court in January, 2005 and affirmed by the Court of Appeals in April, 2006.

POSITION OF THE EMPLOYER

The District argues that this case turns on the CBA provision which permits it to select the insurance carrier and policy. It asserts that the plain meaning of the provision supports its case and supercedes any other argument. It argues that insurance policies detail plan and benefits structure, therefore, providing the District permission to select group insurance policies includes plan structure and benefit selection as well. The District asserts that the Union has argued that the CBA provision only permits the District to change carriers and in that instance the policy; consequently, in this case, where the carrier remained the same but the policy provisions changed, the District was required to negotiate the change. The District argues this is a nonsensical interpretation and application of the provision. It argues further that the Union has mistakenly argued against "waiver" of its rights under Minn. Stat. §471.6161 because it is contract language which constitutes its consent to the District's action about which it complains.

The District further argues that the Union in fact was a part of the decision-making process leading to the changes in benefits coverage. It argues the Union and its members received notice in February, 2003, during negotiations that significant premium increases were anticipated and that the Insurance Committee would meet to discuss cost containment. It points to Insurance Committee meetings where alternative plans were discussed and where a vote was taken to determine the preferred change in plan benefits to save premium cost. It notes that unit members were notified of the meetings. It points to enrollment memos which provide notice of the changes in 2003 and 2004.

The District argues that it did not know that the Union objected to the changes until it was sued in February, 2005. It argues that the Union failed to file a timely grievance which was required, instead of filing a case in District Court, given the CBA provisions for dispute resolution and the need to interpret the CBA language. While it waived its objection to untimely filing of a grievance, it has argued that the doctrine of laches applies and bars the Union's case. It argues that by sitting on its hands and

standing by waiting for a result in the Teachers' case, the Union caused damages to mount and their relationship to deteriorate.

The District argues that employees could avoid increased costs by switching to the Elect Plan which maintained the level of benefits which were being provided by both the Elect and Choice Plans at the time the changes were made. It asserts that because employees could avoid increased costs, the change that was made was minor, not significant, in order to address significant premium cost increases which would impact the District's delivery of program to students.

The District argues that the arbitrator is not bound by court decisions or arbitral awards. It notes that the Transportation Unit CBA does not include the "insurance selection provision" which sets this case apart from it. With regard to the case involving the Teacher's Union, the District asserts that counsel for the School District in the lower court had argued a "different theory of the case" with no reference to the CBA "insurance selection" provision and that the Court of Appeals Opinion has made gratuitous comments with regard to the merits of the District's case based upon contract language interpretation and application.

Finally, the District argues that the proper measure of damages, if any, is actual loss incurred by individual unit employees as a result of the plan changes in 2003 and 2004 which reflects a "make whole" remedy customary in arbitral awards. It argues that arbitrators' awards should not be punitive or based upon speculation. It asserts that this case is not in a posture to look at damages prospectively but, instead, there is data which reports actual experience. It asserts that arbitral awards are distinct because they reflect the parties' agreement to resolve disputes through arbitration, and they reflect the on-going relationship of the parties. The District argues that the Union would experience a windfall if damages were calculated based upon premium savings since many individuals did not incur any additional expense in the two Plan years.

OPINION AND FINDINGS

This record supports a conclusion that the School District violated PELRA when it failed to negotiate with the Union with regard to restructuring of health insurance coverage plans for its members. The law requires negotiation of terms and conditions of employment which includes provision of health insurance. The provision in the parties' CBA which permits the District to select the insurance carrier and policy does not constitute bargaining unit consent to unilateral health insurance plan changes by the District. There has been no waiver, by Contract language or past practice, of the Union's right and the District's responsibility to bargain the detail of health insurance coverages. In addition, the District was expressly required by statute to obtain Union consent to the reduction in aggregate value of the health insurance plan for 2003 and 2004. In this case, the District Insurance Committee Meetings which addressed health insurance issues before the changes were made, did not supplant bargaining.

The claims, which the Union perfected with the filing of a law suit against the District in February, 2005, were properly made in District Court and are not barred here by the doctrine of laches. The Arbitrator's jurisdiction provided by the parties' CBAs has been expanded by Order of District Court which directed the parties to this arbitration. This matter has arisen as a result of the District's defense in District Court based on provisions of the parties' CBA and not from a grievance based upon Contract interpretation. The Union has prevailed, and the appropriate measure of damages is the health insurance premium savings which resulted from the District's improper action.

Procedure; Jurisdiction; Analysis of the Case

The District has argued, for the first time here, that the Doctrine of Laches applies in this case. While it may be appropriate for an arbitrator to consider laches arguments in determining procedural arbitrability, the argument has not been properly made in this case. There is no issue concerning arbitrability. Moreover, the School District has made its laches argument too late. The District Court ruled, when it directed this case to arbitration, that there was no statute of limitations defense. In persuading the Court to direct the case to this arbitration, the District waived CBA time limits for filing a grievance. It very likely did not anticipate that the Court would direct the PELRA claim to arbitration as well. The result of the Court's Order is to provide the arbitrator with jurisdiction over the Union's PELRA claim and the District's defense based upon CBA language.

At this hearing, the Union objected to consideration of its claim for damages. It pointed to the Court Order which preserves the Court's jurisdiction over its claim based upon violation of Minn. Stat.§471.6161 and argued that the Court will properly decide damages. The Union's objection to presentation of testimony and evidence relative to damages was overruled. Minn. Stat.§179A.13, Subdivision 1, quoted above at page 11, permits the bringing of "an action for injunctive relief and for damages caused by the unfair labor practice". In addition, it is customary for arbitrators to provide a remedy which may include an award of damages in contract interpretation cases. The Union has understandably vigorously objected to the manner in which this case has come before this Arbitrator. Nonetheless, there is jurisdiction to fully decide the issues here including liability and damages.

With regard to consideration of Minn. Stat.§471.6161, Court Orders applicable to the Transportation Unit in this case, and Opinions reached in the lower and appellate courts in the Teachers' case, it has been appropriate to review and consider each of them in reaching the decision here. Each has been cited and quoted extensively above in detailing the Background and Summary of the Evidence.

The Arbitrator does not have express authority to determine whether the District has violated Minn. Stat.§471.6161, subd. 5. As noted, the Court has preserved its jurisdiction under it. However, it has been appropriate and necessary in interpreting and applying the CBA provision at issue, which permits the District to select the health insurance carrier and policy, to look to the impact of the statutory provision. The

Contract analysis is addressed more fully below under “Contract Interpretation and the Law”.

With some exceptions, the Arbitrator is not bound by arbitral awards or court decisions. However, it is customary in labor arbitration to consider other cases in rendering an award. Parties often cite to and provide an arbitrator with published arbitral awards and reported court cases in arguing their cases. It is customary to learn from others’ experiences and analyses of issues in similar or analogous cases. It is how a body of arbitral law has developed. In this case, the parties have cited to unrelated as well as directly related cases. While the merits of this case independently support the Award made here, this decision is bolstered by the Partial Summary Judgment ruling in favor of the Transportation Unit in the underlying case pending in District Court, and by the decisions and opinions in the lower and appellate courts in the Teachers’ case. The Arbitrator is fully cognizant of the distinctions among those cases and this one, as articulated in the foregoing Background and Summary of the Evidence.

Contract Interpretation; Law

The District has argued that the plain meaning of CBA Article VIII, Section 1 conclusively supports its position. It argues that by agreeing to include the language, “The School District reserves the right to select the insurance carrier and the policy for the group insurance coverages provided for employees”, in the CBA, the Union consented to the change the District made in the health insurance plan. The Arbitrator does not agree with the District’s interpretation of the provision or that it stands alone in support of the District’s position. It is appropriate to consider extrinsic factors along with the precise wording of the provision.

There has been no evidence of the bargaining history or past practice which illuminates the intent of the parties when the provision was adopted or the manner in which it has been applied. The language, at the least, is ambiguous. It does not support the sweeping conclusions the District’s interpretation requires. There is no support for a conclusion that the Union has relinquished all interest and right to negotiate health insurance plans for coverage. The argument that permitting the District to select the carrier and the policy means all aspects and details of the policy is implausible, unreasonable and results in forfeiture of significant statutory rights. The CBA provision could have, but does not, expressly reserve the right to select coverages.

The language has the practical purpose of permitting the District to survey insurance carriers, review their policies and ultimately select the provider and the policy “for the group insurance coverages provided for employees”. (emphasis added) Although the CBA provision applies only to the bargaining unit employees, arguably, it facilitates the District’s negotiation of health insurance for all employees including those not covered by a collective bargaining agreement. Minn. Stat.§471.6161, subd. 3 quoted above at page 12, sets out requirements for selection of group insurance carriers by the School District. Subdivision 5 applies only to employees covered by a collective bargaining agreement. Michael Petrasek, District Benefits and Payroll

Supervisor, testified that he represented a group of administration employees as he participated in the Insurance Committee discussions.

It is appropriate and necessary to interpret and apply the CBA provision within the context of the parties' relationship, the entire agreement, custom and external law. It cannot be considered in a vacuum. PELRA is an integral part of and defines the parties' relationship, and it inures to the benefit of the public. There has been no argument that even without the contract provision, PELRA would not apply in this case. There is no disagreement that provision of health insurance is a term and condition of employment and subject to negotiation. This Arbitrator has heard and decided numerous interest arbitration cases and is well aware that wages and health insurance are commonly the subject of impasse arbitration. The issues around health insurance concern the structure of coverage plans and the cost to provide them. There is clear agreement that the nature and cost of health insurance is an important and serious issue. It was the subject of District Insurance Committee Meetings and of expert testimony in this case.

Although the Court has preserved jurisdiction under Minn. Stat. §471.6161, it cannot be ignored in this analysis. It very clearly and expressly prohibits reduction in the aggregate value of health insurance benefits unless there is agreement between the District and the Union. This provision bolsters the provisions of PELRA which require bargaining and, accordingly, bolsters the Union's case here. It may also form an independent basis for a claim. [3]

The District has argued that the Court of Appeals in the Teachers' Union case, provided "gratuitous comment" with regard to the merits of its argument that the CBA provision at issue reserved the right to unilaterally change the Choice coverage without bargaining. The Arbitrator agrees that the Court's discussion of the CBA provision constitutes dicta and is not adjudicatory. It is, however, instructive and suggests the outcome if the Court were to consider the issues in this case. It recognizes a principle of contract interpretation which requires express intention, in clear and unmistakable language, to waive statutory rights to mandatory bargaining.[4]

Finally, testimony, given at this hearing and at discovery depositions in the fall of 2005 in the underlying litigation, is noteworthy with regard to both interpretation and application of the Contract provision. Both MaryAnn Thomas and Mike Petrasek testified that they did not notify the Union about the Choice Plan change because they did not believe the change constituted a reduction in aggregate value. Ms. Thomas also testified she believed that the Union had given its consent to the change through the Contract provision. Mr. Petrasek testified on cross examination on the first day of this hearing as follows:

[3] The District Court has awarded Partial Summary Judgment to the Transportation Unit on the basis of the District's violation of Minn. Stat.§471.6161, subd. 5. The Court's Conclusions of Law and Order are quoted above at pages 9 and 10. The Arbitrator agrees with the Union that the Court's Order is the law of this case on the issue.
[4] The Court of Appeals Opinion in the Teacher's case is discussed, cited and quoted above at pages 7 and 8.

Q So when you discussed this in the insurance committee, did you talk about this statute that all the litigation has been about, 471.6161, Subdivision 5?

A That discussion doesn't come up in the insurance committee, no.

Q Did you know about this statute at the time?

A I was aware of it, yes.

Q Okay. What's the reason you didn't bring it up to the insurance committee?

A It was my opinion and understanding that, by keeping one of the plans the same and just changing one of the plans, that we weren't changing the aggregate value.

TR (9/14/06), page 196

The deposition testimony of Donna Friedman, provided on November 22, 2005, is a part of this record as School District Exhibit 21. She did not testify at this hearing. Ms. Friedman (formerly Pittman) had been a Union Business Agent since 1994 and was the lead negotiator for the Union in negotiations with the District in 2003. She is a licensed attorney, and she provided legal advice to the Union. She left the Union in December, 1994. She testified that she had had no conversation with the District about the Choice Plan change before she left. She learned about it through this litigation. At the time of her deposition, she was Human Resources Director for the New Prague Area School District. With regard to the Contract language and the law, Ms. Friedman testified as follows:

Q And I want to call your attention to these words, [as read] 'The school district reserves the right to select . . .the policy for the group insurance coverages provided by employees.' You would agree with me that changing plan design is selection of policy; isn't that correct?

A Not necessarily.

Q Why do you qualify that?

A I qualify that because I am aware of a Minnesota statute under which I currently operate in my current role that limits a change in policy so that an employer cannot change the aggregate value of the benefits unilaterally without (sic) group's approval.

Q Right. But other than that statute, selection of insurance policy is authorized by this contract. Correct?

A This contract does say that –well, it says what you read, yes; however, my qualification is that it's my read that a collective bargaining agreement cannot trump the statute.

Q Did it occur to you that this collective bargaining contract could be read to constitute authorization under the statute to make the changes the school board made?

A No. That would not have been my –my outlook on this. It never was as a business agent. What I uniformly advised my members is that terms like this were subordinate to that statute.

School District Exhibit 21; TR(11/22/05), pages 25 and 26

Q And so – now, Section 1 exists under collective bargaining contract. Correct?

A It does.

Q That means it was negotiated between the union and the employer at some point. Correct?

A Presumably, yes.

Q Is today the first time that you have – that it occurred to you that perhaps the union did consent to changes because they gave a school district the right to select policy?

A No.

Q You've thought about that before?

A Certainly. As a representative of the local, when you see a clause like that and you know there's a statute, I think that it's only reasonable to conclude as the union rep that if you intended to undo the effects of a statute, you would specifically say that; otherwise, I would have been in the role of advising my members of, look, you need to take a look at what the aggregate value is and you need to determine whether we should agree to that amount.

School District Exhibit 21; TR (11/22/05), page 29

The entire record in this matter casts doubt that the District genuinely believed that the Union had consented, through the parties' CBA, to the Choice Plan changes. The issue was first raised on appeal in the case brought against it by the Teachers' Union. As noted above, dicta in the Court of Appeals Opinion addresses the propriety and merits of the District's argument, rejecting both. In its Post-hearing Brief, the

District has framed the issue in the case in a manner to suggest its focus was on whether its action constituted a reduction in the aggregate value of the insurance, and not upon CBA-provided consent to the change. It apparently saw the change as "marginal" and, therefore, not a reduction in the aggregate value within the meaning of 471.6161, subd.5.

Insurance Committee

The District has focused a good part of its case and argument upon the efficacy of the work of its Insurance Committee. It provided expert testimony with regard to the use of insurance committees in school districts as well as evidence and testimony with regard to two meetings of its Committee in March and May, 2003. The Union also provided some historic testimony with regard to the District's Health and Safety Committee which became known as the Insurance Committee together with specific testimony concerning the spring 2003 meetings. The Union's cross examination of the District witnesses was as important as examination of its own witnesses.

Dennis Dahlman's testimony has been summarized above at page 13. His description of the formation, purpose, functioning and outcomes of the Insurance Committee which he convened was significantly different from the work of the District's Committee in 2003. The record made on the matter provides no support for the District's argument that the Union knew or should have known about the plan changes or that it was bound by the vote taken at the May 7, 2003, meeting after the 2002-2004 CBAs had been fully executed.

The Union leadership received no notice of the meetings, did not attend them, was not represented by unit members and received no report of discussions or decisions which had been made. For emphasis, one unit member attended the first of two meetings; and no one from the Union attended the May 7, 2003, meeting where a vote was taken to recommend the Choice Plan change which was ultimately adopted by the School Board 12 days later. It is curious that the May 19, 2003, Memo which provides the recommendation of the Personnel Administration Committee to the School Board details two options which reflect 6.5% and 5% premium reductions. The Insurance Committee had considered change options reflecting 7%, 5% and 3% reductions, favoring by an 8 to 2 vote, the 5% option.

Damages

The voluminous record made at hearing and each of the many arguments made by the parties has been closely and carefully considered. The award of damages reflects the Arbitrator's agreement with the analysis provided by the Union's expert witness bolstered by the Award made in the lower court and affirmed by the Court of Appeals in the Teachers' Union case. It is also supported by public policy expressed in Minn. Stat.§179A.01. The District disagrees with the measure of damages. It has not refuted the Union's case on damages.

This case has been brought in District Court by the Union on behalf of its members. An award that was based on rather minimal additional expenses, incurred by a few of the unit members over a two year period, does not compensate for the loss resulting from the District's unilateral action in violation of law that governs the parties' relationship.

This case is in this forum at the direction of the District Court, where it was properly brought by the Union. It is in arbitration as a result of a Court Order directing resolution of the CBA issue raised by the School District in defense of the statutory violations alleged by the Union. The Arbitrator was also directed by the Court to resolve one of two statutory violations alleged by the Union. Consequently, the Arbitrator's jurisdiction arises outside of the parties' CBA. This is not grievance arbitration subject to the grievance resolution provisions of the CBAs.

The Union seeks and has been awarded remedies for the District's violation of Minn. Stat. §§179A. 07 and 179.13. The Union, and not the individual unit members, is the complainant in this case and so the monetary award made here is properly directed to it. The provisions of Minn. Stat.§471.6161 are inextricably intertwined with the CBA provision in issue here and with the provisions of PELRA. The provisions of Minn. Stat.§471.6161 help to define and modify the District's rights and responsibilities relative to the provision of health insurance pursuant to the parties' Agreement and the provisions of PELRA. The Contract provision, interpreted and applied in this case, was necessarily considered in the context of the statutory provisions.

AWARD

The School District violated the provisions of Minn. Stat.§§ 179A.07, 179A.13 and 471.6161 when it failed to bargain and unilaterally reduced the aggregate value of the health insurance benefits provided pursuant to its Agreements with the Union for health insurance plan years 2003-2004 and 2004-2005. The School District shall compensate the Union for its loss by payment in the amount of Sixty thousand seven hundred sixty seven dollars ($60,767.) which reflects the premium savings experienced by the District as a result of its improper action.

Dated: March 20, 2007

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Janice K. Frankman, Attorney at Law
Arbitrator